IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.221 OF 2002

Manipal Stock and Share Brokers Ltd. ... Petitioners

v/s

Prakash G. Patankar and anr. ... Respondents

Mr Snehal Shah i/b Narayanan and Narayanan for Petitioners.

Mr G.K. Kinkhabwalla i/b M/s Auroma Law for Respondent No.1.

Mr Rishabh Shah i/b M/s S. Satpute and Co. for Respondent No.2.

CORAM : D.K.DESHMUKH J.

DATE : 23RD AUGUST 2004

P.C.: -

1. By this petition, the petitioners challenge the award dated 21st February 2002 passed by the Sole Arbitrator directing the petitioners to pay an amount of Rs.2,30,696 to the respondent. It appears that the arbitration proceedings commenced before the learned Arbitrator. The learned Arbitrator disposed off those proceedings by award dated 10th September 2001. By that award, the learned Arbitrator directed the petitioners to pay an amount of Rs.5,571/- to the respondent. It appears from the award that the claim of the respondent who was applicant before the learned Arbitrator was that the petitioners failed to deliver to them 120 shares of Pentafor Softwarde Ltd. purchased by him on 6th April 1999 for a period of six months and the same number of bonus shares to which he became entitled in October 1999. He also claimed that because of the delay in delivering the shares, the respondent could not take advantage of the rising price of the scrip between April and November 1999. The respondent made a claim of Rs.3,10,000/- against the petitioners on this count. In the application, the respondent had claimed that he has lost dividend on 100 shares of Larsen and Toubro and 650

shares of Reliance Industries Ltd. for the year 1998-99 because of the delay on the part of the petitioners in transferring the shares. The learned Arbitrator, however, noted in the award that the respondent has not made it clear as to how and why he is claiming an amount of Rs.3,10,000/- on account of loss. In paragraph 4.3 of the award, the learned Arbitrator observes thus :-

> 4.3 ..... I am not clear on the method adopted by the Applicant for fixing the amount of his claim at Rs.3,10,000. At the second hearing, I had asked him to furnish documentary evidence and relevant facts to establish the claim. He, however, remained absent at the third hearing and neglected to give a written state statement. After some hesitation, he filed a written submission dated 22nd May 2001 in which he stated that the Respondent was not justified in withholding shares worth Rs.1.40 lakhs for the recovery of Rs.7,500 on account of 100 shares of ITC Bhadra Chalam which it could have debited to his account."

. In paragraph 4.8 of the award, the learned Arbitrator observes thus :-

> 4.8 "For want of information on share prices on the relevant dates, dates of book closures, nature of sales, i.e. cum or ex-dividend, I am unable to calculate reasonable amount of compensation with exactitude."

. Ultimately, the learned Arbitrator made an award directing the petitioners to pay an amount of Rs.7,500/-. From that award, it is clear that because of lack of material supplied by the respondent, the learned Arbitrator could not understand as to how he was claiming Rs.3,10,000/- as loss. On the material that was available, the learned Arbitrator calculated the amount of loss and made the award.

2. It appears that the respondent made an application on 24th October 2001 before the learned Arbitrator. In that application, it appears that the respondent gave explanation as to how he was claiming the amount of loss. On the basis of the explanation given by the respondent, the learned Arbitrator made a further award dated 21st February 2002. By that award,

the learned Arbitrator came to the conclusion that the respondent is entitled to an amount of Rs.1,72,920/- for the loss suffered by the respondent with interest from 16th March 2000 and accordingly, he made the award for payment of Rs.2,30,696/-. It is this award which is under challenge.

3. The learned counsel appearing for petitioners submitted that the only provision to which probably this award can be traced is the provision of section 33 of the Arbitration and Conciliation Act 1996, but the provision of section 33 will not permit the Arbitrator to make such an award. he learned counsel submits that under section 33 of the said Act, in the absence of there being any agreement between the parties, only a computation error or clerical or typographical error in an award can be corrected or an Arbitrator can make an additional award on a claim which has been omitted from the award. Under section 33, an Arbitrator cannot review his decision on a particular claim and make a further award. The power of review has not been conferred by the legislature on arbitral Tribunal. According to the learned counsel, what has been done by the learned Arbitrator by the impugned award is that he has reviewed his earlier decision on the aspect of loss, on the basis of information which was subsequently

supplied by the respondent. in the submission of the learned counsel, this clearly is beyond the powers of Arbitrator under section 34.

4. The learned counsel appearing for respondent, on the other hand, submits that the amount of loss which was arrived at by the learned Arbitrator in the first award was clearly an error. The material which was produced by the respondent before the learned Arbitrator was omitted from consideration and therefore, the learned Arbitrator had the power to make this award under sub-section (4) of section 32. In the submission of the learned counsel, thus, the award is within the jurisdiction of the learned Arbitrator.

5. In the light of these rival submissions, it is necessary to refer to the provisions of sub-sections (1) and (4) of section 33 of the Arbitration and Conciliation Act 1996, which reads thus :-

> "33. Correction and interpretation of award; additional award -
>
> (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the

parties -

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical error or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award."

. It is clear from the provisions of sub-section (1) of section 33 that in the absence of any contract

between the parties, an Arbitrator under this section can correct only a computation error or a clerical or typographical error and an Arbitrator can make an arbitral award on a claim which was omitted from consideration while making the original award. Under sub-section (4) of section 33, an Arbitrator will not be able to make an award on a claim which was considered and was either granted or rejected or partially granted or partially rejected. Under sub-section (4) of section 33, an additional award can be made by the Arbitrator on a claim which was totally excluded from consideration by the Arbitrator though it was raised by the parties before the Arbitrator. The power contained in sub-section (4) of section 33 is not a power of review. In exercise of power under sub-section (4) of section 33, the Arbitrator cannot reappreciate the material and correct any errors in consideration of the material. So far as the instant case is concerned, even if it is assumed that the power under section 3(4) was a power of review, even in exercise of that power, the award which is impugned in this petition, could not have been passed because the award has been passed on the basis of additional material supplied by the respondents to the learned Arbitrator. This information was within the knowledge of the respondents when the first award was made or could have been made available by them to the

Arbitrator with due diligence. Therefore, in review jurisdiction, such information could not have been considered. So far as the present proceedings are concerned, decidedly there is no power of review conferred on the Arbitrator. Taking overall view of the matter therefore, to my mind, it is absolutely clear that the award which is impugned in the petition is clearly an award which is made without having jurisdiction by the Arbitrator. Therefore, it is set aside. Petition is granted in terms of prayer clause (a). The respondents are also directed to pay cost of the petitioners as incurred by the petitioners.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.